PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS,

1875.

VOLUME XIV.

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PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

FOR THE

PURPOSE OF MAKING LAWS AND REGULATIONS.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Thursday, the 28th January 1875, at noon.

PRESENT:

His Excellency the Honourable Sir PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *presiding*.

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable Colonel M. K. KENNEDY.

The Honourable J. K. BYTHELL.

The Honourable Colonel W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable Rao Sahib VISHVANATH NARAYEN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Khan Bahadoor PADAMJI PESTONJI.

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The letter from the Secretary to the Government of India, conveying the assent of His Excellency the Viceroy and Governor General to the Bombay Jails Bill, was presented to the Council.

The Council then proceeded with the Bills and orders of the day.

BILL No. 1 OF 1875.—THE BOMBAY REVENUE OFFICERS AND LAND REVENUE CODE BILL.

Mr. Chapman moves that Bill No. 1 of 1875, "the Revenue Officers and Land Revenue Code Bill" be read a first time.

The Honourable Mr. CHAPMAN, in introducing the Bombay Revenue Officers and Land Revenue Code Bill, said,—In the first place, I wish to assure the Council, and all who are interested in this Bill, that it has not been hastily considered and prepared. For a long time past, I have felt that it would be very useful to put together the various Regulations and Acts relating to

the land revenue administration of this Presidency and re-enact them in the shape of a comprehensive, complete, and intelligible Code. This, then, was the origin of the measure. After the work had been commenced, I thought it would be a great pity not to embody such improvements and alterations in the substantive law, as the experience of past years had shown to be necessary. I was conscious that I had neither the ability nor leisure requisite for the task of codification; and I induced my friend Mr. Naylor, who is at present conducting the duties of Legal Remembrancer, to undertake the work. I wish, therefore, it should be known that he is the real author of the Code, and entitled to the full credit of the labour and research that have been expended on its preparation. I will now explain the course that has been followed. Honourable members have been in possession for some months past of the first draft, and will have been able to judge for themselves of the care and accuracy with which Mr. Naylor, so to speak, rough-hewed it. In order that there might be no risk of any portion of the existing law being omitted, he adopted what, in book-keeping language, is known as the system of "double entry." That is to say, he made in the first instance a complete list or catalogue of the substance of each section of every existing Regulation or Act, and then proceeded to account for the way in which its provisions had been dealt with in the Draft Code, and to specify the corresponding sections. The original draft having been prepared in this careful and laborious manner, copies were circulated to the most experienced and able officers in both branches of the service, with a circular letter which I will now read to the Council:—

The Bill meant to be a codification of former Regulations and Acts relating to land revenue administration in the Bombay Presidency.

The work of codification performed by Mr. Naylor, C.S., and opinions asked upon the draft from officials concerned.

"I have the honour to forward, for the favour of your opinion and any amendments you may think fit to suggest, a draft of a Revenue Code for this Presidency.

"2. The existing revenue laws are, as you are aware, only to be found scattered through the Acts and Regulations of the last fifty years in detached portions, and in consequence have not that intimate connection one with the other which is necessary to prevent inconsistencies and to ensure a sound revenue administration upon fixed recognized principles. The accompanying draft, which has been prepared by Mr. J. R. Naylor, C.S., has been accepted as the frame work upon which, it is hoped, after full consideration, a complete and satisfactory Revenue Code may be based, but Government do not at this stage wish it to be understood that they adopt all or any of the changes or modifications of the existing law suggested therein.

"3. The first and principal object to be attained in framing the proposed Code is to consolidate all the *general* revenue laws now in force, and your attention is in the first place particularly requested to this object with a view of ascertaining whether anything has been omitted that ought to have been included.

"4. In the next place, Government will be pleased to receive any suggestions with a view of simplifying the arrangement of the Code, and of rendering it, if possible, clearer for facility of reference.

"5. It will then be desirable to have the opinions of those most conversant with the different branches of the revenue law as to the completeness and suitability of the proposed provisions of the Draft Code with reference to those various branches, and with this view

you are requested to follow up the sections thereof which deal with any subject with which you are most familiar, and to point out any shortcomings or errors of wording, or of principle, which you may detect, and to suggest any alterations or improvements in either respect which may occur to you.

"6. Such subjects as the following commend themselves most particularly for notice :—

I. The sufficiency of the powers of Revenue Officers of the different grades.

II. The completeness of provisions as to the punishment and dismissal of subordinate officers.

III. The sufficiency of the provisions as to sureties.

IV. The thoroughness of the rules with regard to the survey and assessment of culturable lands, and of lands within the sites of towns, villages and cities respectively.

V. The adaptability of the provisions as to assessment, and as to the rights and liabilities of holders generally to all the varieties of existing tenures.

VI. The sufficiency of the proposed new enactments or re-enactments for the settlement of all possible claims to exemption or limitation of any kind in respect of the amount of land revenue payable by any class of holders.

VII. The suitability and sufficiency of the provisions as to (1) the realization of revenue demands, (2) the procedure of Revenue Officers, and (3) appeals and revision."

By this means we received from time to time very valuable suggestions and criticisms, and we had besides the advantage of personally consulting the survey and other officers during the rains at Poona. After all the suggestions thus obtained had been duly considered, I got my friend the Honourable Mr. Justice West to give us his assistance; and I wish to take this opportunity of gratefully acknowledging the valuable aid rendered by him. We owe it to Mr. West that the definitions have been expressed with so much perspicuity and precision; and that the language and arrangement of the subsequent sections have been kept in harmony with those definitions. He has besides been the author of several useful amendments of a substantive character which have suggested themselves to him from his experience as a judge, and from his intimate acquaintance with the decisions of the courts on various points connected with revenue administration. This, then, is a brief account of the manner in which the Bill has been prepared. I am not presumptuous enough to say that some slips may not yet be discovered; but I do say that no pains have been spared to render it as complete as possible, and I venture to think the work of the Select Committee has, in a great measure, been forestalled. I propose now to point out the main and principal alterations that have been made in the existing laws, regarding the propriety and expediency of which alterations there will, I hope, be but little room for discussion. Chapters I. and II. and IV. and V. call for no remarks. They merely contain the substance of the provisions of the existing law re-arranged and expressed with a greater degree of perspicuity and accuracy, and amplified where necessary. Chapter III. contains *verbatim* the provisions of the Wuttun Bill, which has so recently passed through this Council, after so much laborious

The contents of the Bill generally described. Forests are to be protected more than at present.

Pro public interests to be protected in the transport of timber.

consideration. Chapter VI., besides containing emendations of a minor character, which experience has shown to be necessary, contains several entirely new sections which I will here explain. Provisions for the protection of the Government forests appear here for the first time. Looking to the magnitude of the public interests, both economic and financial, which this important and growing department represents, I don't think exception can reasonably be taken to the moderate extent to which we propose to provide for their protection. Section 116 authorizes the Government in certain districts to require that all timber in transit should be covered by a pass, and to prescribe the route by which it shall be taken. This power seems to me absolutely necessary in forest districts, where the property of inamdars is so mixed up with that of Government, and where a man can now without fear of contradiction answer when questioned (if indeed he condescends to answer at all) that the timber he is carrying, and which has probably been stolen from a Government reserve, has been obtained from an imaginary inamdar. It will be observed that the section does only apply to persons transporting timber beyond the limits of the village in which it was produced, and will not affect that required for the domestic use of the villagers themselves ; and further that the power is not to be indiscriminately exercised all over the country, but only at certain specified localities. The next section to which I would ask attention is No. 117, for the protection of road-side trees. I confess to being an enthusiast on this subject, and I believe that next to providing a good water-supply, few benefits of a really more simple and practical character can be conferred on the country than by planting avenues of trees. A great deal of attention has been given to this subject of late years, and a great deal of public money is now annually expended on this description of planting. I think, therefore, it is well to take this opportunity of recognizing the public rights in these trees. The next provision in Chapter VI. to which I beg to draw attention is that contained in Section 134. There is no part of the Code on which greater attention has been bestowed than this, and I am happy to be authorized to inform the Council that the principle embodied in this section meets with the approval of the Honourable the Chief Justice and the Honourable Justices West and Nanabhai, with whom I have had the advantage of consulting. It is not my intention to trouble the Council with a disquisition on the law of landlord and tenant. My own opinion is that we in this Presidency may be congratulated on having hitherto escaped precise legislation for the regulation of the varied and complex relations between these classes. While, however, I should be very averse to any attempt at making precise and definite laws as to the rights and privileges of particular classes of tenants, which questions I am very decidedly of opinion had better be left to the courts to determine on their merits, and, according to the common law and custom of the country, I hold nevertheless that a Code of this character would be incomplete without a broad general recognition of the difference between the ancient cultivators of the soil, known as Wuttunee Kools in the Konkan and Kadeem ryots in the Deccan ; and ordinary tenants in the modern acceptation of the term. The principle we have endeavoured to enunciate is this, that when either an inferior holder or tenant has been in occupation of the land before, for example, the grant of a village in inam, his status in respect to proprietary rights only is not to be affected by the fact that the village has passed from the hands of Government into those of the alienees. And further that when owing to lapse of years there is no evidence to show how an ordinary tenant first obtained possession, then the period of duration

Section 134 proposes to draw a distinction between ancient tenants, who have a certain hereditary right to the sale, and tenants-at-will, who may be treated regarding their occupancy as seems fit to the landlord.

of the tenancy may be presumed to be co-extensive with the duration of the tenure of the landlord. It must not be forgotten that this presumption is not to override a contract or usage at variance with it. I believe legislation to this limited extent will be of much value in protecting those whose status is far different from that of the ordinary tenant in the English sense of the term, and that it will be in conformity with usage and native opinion. It is only a short time ago, when, in consequence of the great excitement in the cotton trade, land in Dharwar became very valuable; holders were turned out of their properties right and left. I think it is necessary that a recurrence of such hardships should be prevented. Since the Bill has been published, I have ascertained from the Chief Justice that he considers "shall be presumed," might advantageously be substituted for "may be presumed," as he considers greater uniformity of decision will be thereby secured. He further considers that instead of the words, "and there is not any such evidence of the period of its duration," the words "and there is not any such evidence of the period of its *intended* duration" might be substituted. The suggestions of so eminent an authority will no doubt be attended to by the Select Committee. I wish further to explain that the Chief Justice does not wish to be understood as expressing any opinion on the rest of the Code, as he has not had sufficient time at his command to study them. I do not think it necessary to dwell on the other alterations contained in this chapter; they are all of a simple and practical character, and no doubt will be duly attended to hereafter by the Select Committee and the Council. I pass on to Chapter VII., which deals with the subject of claims to exemption from payment of land revenue. To a great extent, this chapter contains nothing more than the provisions of the existing laws, which provisions, in point of fact, have happily become obsolete, owing to these claims, which at one time were the cause of much disquietude, having been set at rest by the summary settlement. The only new part is that contained in Sections 162 to 179, which relates to claims to uncultivated lands in villages, towns and cities. I will be observed that five years' occupation from the passing of this Bill will give a prescriptive title, and I imagine no objection can be taken to this on the score of want of liberality. An exception has been made in the case of villages not being kusba towns in Guzerat, but this is a point of detail which will be dealt with in the Select Committee. I do not think it necessary at this stage to trouble the Council with any remarks on Chapters VIII. and IX. They contain substantially the existing law regarding survey and boundary marks re-arranged and amended. Chapter X. contains the provisions for surveying and assessing lands in towns and villages. As already explained, five years' prescriptive enjoyment gives an exemption from taxation; and I imagine there can be no doubt of the propriety of declaring the right of Government to land revenue where this liberal condition cannot be fulfilled. I would ask the attention of the Council to Section 211, which authorizes the levy of a survey fee in certain cases. The amount of this fee will be determined hereafter, but I think there can be no doubt that the holder should pay for the cost that will be incurred in surveying his property and giving him a plan and title-deed. It must be remembered that he will not be liable to assist in these operations in the same way that the occupants of agricultural fields are. Chapter XI. on Local Funds hardly calls for remarks. We have recognized the existence of Taluka Committees, and we have provided that the appointment of members of the Committee should be for a limited period, and by this means useless and indifferent men will be got rid of without difficulty. The law relating to the realization of land revenue will be found very precisely and carefully laid down

Five years' occupation of uncultivated lands to give a prescriptive title to possession.

Means to secure Government being paid dues on the land before the payment of sowcars.

in Chapter XII. The new provision to which I beg to draw the special attention of the Council is that contained in Clause 1st of Section 224, by which the Collector is authorized to follow the crop into the hands of the person who has purchased it with the knowledge or means of knowledge that the current year's assessment on the land which has produced it has not been paid. This is intended to meet the case of the village Marwadees and money-lenders, who step in and deprive Government of what, by the usage of the country, is their prior lien. The remaining chapters refer to procedure. I venture to hope the course we have laid down will ensure the quasi-judicial functions of Revenue Officers being performed with more system and method than have hitherto been the case. The defect in our practice up to the present time, in my opinion, has been, that small and great matters have been liable to be dealt with in the same way, and that there has been no provision for the more important class of cases affecting individual rights being fully heard. It will be observed that under the arrangements we propose, we have laid down distinct rules as to the manner in which the different classes of cases are to be investigated and decided. Then, as to the important question of appeals, I am no advocate for curtailing the existing privileges; but I do say that there should be some kind of limit placed upon the time within which parties feeling themselves aggrieved should apply for redress, and on this point we have followed the laws relating to civil appeals. Under the head of revision, the widest latitude is given to Government and supervising officers to examine at any time the proceedings of those subordinate to them and to modify or annul them whenever it may appear necessary to do so. With these safeguards I hope there is no fear of the humblest person being deprived of the right he has hitherto enjoyed of carrying his grievance to the highest authority in the land, while I feel confident that the system under which the executive officers of Government will be obliged to regulate their procedure in accordance with the importance of the class of business before them will be highly beneficial and will conduce to a higher sense of responsibility. With these remarks I beg to move that the Bill be read a first time and referred to a Select Committee for report. As I have already explained, we are in possession of the views and opinions of the best and most experienced officers of both branches of the service, and I hope the Committee will see their way to decide on the proposed changes of principle within a few weeks. I would suggest that a report to this extent be submitted, and that the Bill be then translated and circulated. In this way, I hope it may be read a second time and passed during the next Poona Sessions.

The Honourable Mr. ROGERS—In what the honourable mover of the first reading of the Bill has just said regarding Chapter VIII. on "revenue surveys and the assessment of lands and the partitions of estates," he omitted reference to a slight matter which I may now call attention to. By the old law, Survey Officers were enabled to fix the demands of a khote on his tenants at the time of the general survey of the district. According to Act I. of 1865 a tenant was "a person holding under an occupant or superior holder by a right derived from him and otherwise than by ownership or inheritance," and the Survey Officers accordingly proceeded to fix the rents in cash of all tenants. By Section 190 of this Bill, the Survey Officer's powers will be more clearly defined and he will be able to interfere only in fixing the demands of the khote on all inferior holders not being tenants by a right derived from him.

The definition of "Tenant" differs from former definitions of the term.

The Honourable Rao Sahib VISHVANATH NARAYEN MANDLIK—Your Excellency,—I did not intend to make any lengthy remarks upon the honourable member's motion; but I think it necessary to make a few remarks on the principal points raised by the Bill, because of the desire which has been expressed to dispose of it rapidly. I have not yet had time to examine the Bill carefully, or even to go through the whole of it, and compare it with the laws as they now stand. Some of the definitions will require to be very carefully looked into, and the whole must be deliberately considered; but at present I do not propose to say anything regarding the first five chapters. The third chapter we have recently discussed in Poona and Chapters 2, 4 and 5 substantially relate to official organization, the discussion on which will most properly take place in Select Committee, where (since we have been assured by those who are particularly concerned in the jurisdiction and duties referred to in the Bill that it has already been carefully examined) doubtless all the necessary modification will be effected. But at Chapter VI. I think we come upon material for discussion of a very important charactor. I think that this Bill will entirely change the position of the landlords of this Presidency as compared with the position they occupied under Regulation XVII. of 1827. That regulation simply introduced rules regarding assessment and for the guidance of revenue officers in respect of the administration of land revenue. But the present Bill goes much further. It seeks to enact in positive terms laws regarding a certain description of landlords, which, I apprehend, have now been proposed to be promulgated for the first time in India. Judging from the labour I have already had in going through the first draft of this Bill, I do say that the changes now sought to be introduced call for the most earnest and deliberate consideration. If the Select Committee, in the course of their deliberations, refer to the recent decisions of the Lords of the Privy Council on several Madras cases relating to the land law in that Presidency, they will probably come to the conclusion that it will be a matter for their most serious consideration how far positive enactments of the kind proposed in this measure can safely be made when there is no necessity for them. If I saw it was necessary to promulgate a new law, I would say, by all means do so; but there is a positive mischief done by making positive declarations when they are not needed. I am simply repeating the sentiments of the late Court of Directors when I urge that we ought to avoid making new laws unless we are convinced of some proved mischief existing in the body politic. In regard to forest rights, I think it will be found that the sections upon that subject contained in this Bill require considerable improvement. Forest rights differ all over this Presidency, and no definite law can be applied to them. I may take the liberty of saying that even the decisions of the Secretary of State in regard to the forests of the three Presidencies, as published in the Blue-books up to 1871, must affect considerably the provisions sought to be passed in this Bill. I would ask that some considerable time be granted for the consideration of the propositions contained in this Bill, for it is impossible to understand its important bearings in a brief period such as is alluded to by the Honourable Mr. Chapman. Regarding roadside trees, I think that some distinction will have to be made between trees planted by private individuals in their own properties adjoining highways and trees which are *bonâ fide* roadside public trees. It must also be borne in mind that people in this country have been in the habit of planting roadside trees as an act of piety, and scores of miles of roads have been planted in this way, an instance of which is the old road between Satara and

Rao Sahib Vishvanath Mandlik objects to Section 34 as an unnecessary interference between landlords and tenants.

The section as to forest rights will require improvement.

Poona. I shall now say a few words with regard to tenant right. I am at present preparing a summary of the whole law in India upon the subject as it has existed during the last seventy-five years, and I have not yet had time to complete my labours. I think, however, so far as I am able to judge at present, that the sections on the subject introduced in this Bill will effect a radical change in the position of land-owners, and unless the Select Committee are satisfied that such a change is required on general grounds, I trust they will see their way to specify the particular cases in reference to which such a positive enactment is required. At present it is made applicable to the whole of the tenantry in this Presidency—a state of matters which may induce a great deal of litigation just as the recent introduction of a similar section in the Punjab has been proved to cause more law-suits than existed before. The distinction between ancient tenants and new tenants is one which is well known, but unfortunately I think it is one in regard to which more mistakes have been committed than in the case of any other vexed question I know of. Proprietory right, we are told under this section, is to be distinguished from a right to increase rents, but I think that provision requires modification, and I hope the Select Committee will make the necessary alterations in order to make the intentions of the sections unmistakable. At the same time I think the section will be found to be a useless innovation in view of some possible contingencies which this section may provoke, but which I cannot think will arise otherwise within the next fifty years. As to the illustration about the sale of lands in Dharwar, a more unfortunate illustration could not have been given, and in my opinion it would have been quite as reasonable to cite the Bombay share mania as a standard of ordinary commercial enterprise in Bombay. In all excited periods, exceptional circumstances do occur, but as these do not represent the usual state of matters, it would be absurd to introduce general legislation because of those exceptional circumstances. In my opinion the sales of land at Dharwar was such an exceptional case, and therefore no legislation regarding the tenantry founded on that unusual solitary instance is requisite. In regard to the Summary Settlement Acts being embodied in this Code, I must say that I hope in Select Committee it will be found advisable not to incorporate those Inam Acts into this Code, but leave them aside altogether. It ought to be considered as a matter of principle to terminate these summary enquiries as quick as possible, and relieve the State from its connection with the Inam Acts. As has been done in Madras, the enquiry being completed, a sort of Inam enfranchisment Act should be passed as soon as possible so as to restore the status of those property-holders. Regarding surveys, the Statement of Objects and Reasons says that they were carried on under departmental orders up to 1865, when they required to be legalized by an express law. Now, I think it is erroneous to suppose that any special legislation was required in that year. What was ignored in that and previous years, was the fact that in this Presidency there existed, and do now exist, not one or two but many tenures. I take it that the original Survey Act was intended simply for one class of tenures, viz., those above the ghauts; and when the provisions of it were introduced into districts where different kinds of tenures prevailed, it is no wonder that they were found to be defective. The section to which the Honourable Mr. Rogers has drawn attention refers to one of these kinds of tenures and by no means a very important kind of tenure, considering that there are nearly eight districts in Gujarat and the Konkan in which tenures prevail different from those of the Deccan. I think that Section 190 will really require great attention and, possibly, some essential modifications. The Select Committee should also consider how far the local fund pro-

visions should be worked in the case of Summary Settlement holdings. There have been two cases in Tanna where the levy of enhanced assessment has been resisted under the plea that the Summary Settlements made by the State were a settlement once for all. I think that that contention is to a certain extent well founded, but I should still hope that the original settlements will be taken for what they were intended; and that even if there is a small sacrifice of revenue involved, the first settlement will be made the final settlement, so that it may not be said there has been any breach of good faith as regards these original settlements. Our attention has been drawn to Section 224 regarding the land revenue. I entirely agree with that and the other corresponding sections. I do not object to what is proposed regarding appeals. In conclusion, I beg to state that if I have the honor to be placed upon the Select Committee, I shall do all I can to expedite their labours; but, we must have ample time, and I repeat that the Select Committee cannot be too cautious as to how they deal with a measure of so much importance as the Bill now introduced.

The Honourable Mr. CHAPMAN, in reply to the Honourable Rao Sahib, pointed out that the Dharwar illustration was as fortunate as it well could be, because it revealed the presence of an evil which the Government was bound to correct. It was the duty of good statesmanship to provide for difficulties such as those which had arisen in the case of the Dharwar inamdars. It was easy to sail smoothly along on quiet seas, but responsible officers should nevertheless be prepared for bad weather; and this was the principle which ought to actuate the Honourable Members of Council in preparing a measure which would not only provide for the carrying out of ordinary revenue duties, but also secure justice to certain classes of people in such a crisis as that which had caused the recent speculations in land at Dharwar. It ought not to be forgotten that the land in the southern portion of the Presidency was being daily found to be a valuable marketable article, and it behoved the Government to see that in these interchanges of property there was no infringement upon the rights and privileges of the ancient cultivators of the soil.

His Excellency the PRESIDENT—Is not the declaratory enactment to have the effect of preventing Courts of Law from doing what they now do? This Bill is not merely a codification: it is evident that a change in the present law is contemplated.

The Honourable Mr. CHAPMAN—I say that at present, as far as I can understand, there is an absence of definite principle in the law regarding tenants, and the Judges of the High Court say that the declaration of principle to the limited extent proposed would be of great value in guiding the decisions of courts upon this subject.

The Bill, not only a codification pure and simple, but the embodiment of a new law.

The Honourable RAO SAHIB—I think that the effect of this new section will be to make substantially a new law. I am preparing a summary of decisions of the late Suddur Adawlut and the High Courts in other Presidencies, and I think that the result will prove that the law now sought to be introduced in this Bill is different to what has hitherto existed elsewhere in India.

The Honourable NACODA MAHOMED ALI ROGAY—Sir,—I had no intention to speak on the Bill at this stage; but after the remarks made by the Honourable Mr. Chapman, I feel it necessary to say a few words. The scope of the Bill now before the Council is of so extensive a character, that the law in force on the subject for nearly half a century has to be considered and digested to suit the altered circumstances of the various towns and villages throughout the Bombay Presidency. The land revenue of the Presidency is, I should think,

one of the chief sources of the revenue derived by Government, and would therefore affect the interest of the great masses of the people of all classes and conditions, and legislation on such an important subject should not be carried out without patient and mature consideration. The Bill has been in the hands of members for not more than ten days, which time, though virtually sufficient according to the rules, is not practically so for the thorough consideration of such an important enactment. The list of Regulations and Acts repealed, as shown in Schedule A, is of so formidable a character as to frighten even a member conversant with law; how much more so would it be the case with those members who are not acquainted with the Regulations and Acts that have been in existence during a period of nearly half a century? I have, with all the time at my disposal, only been able to go hastily through the Bill, but I have not been able to compare its sections with the old Regulations and Acts proposed to be repealed according to Schedule A. I have, therefore, been unable to see whether there is really a necessity for introducing the present Bill. I believe there may be other members in the same predicament as myself. I should therefore propose that the first reading of the Bill be postponed for three months. In the meantime the Bill should be translated in the various languages of the Presidency, and wide publicity be given to it. Copies of the Bill, at the same time, should be sent to the principal Revenue Officers throughout the Presidency with instructions to give their own opinions on the subject, as well as of those affected by the Bill.

The Honourable Mr. BYTHELL did not think that any good would be obtained by translating and circulating the Bill before it had been referred to the Select Committee. He would therefore oppose the amendment.

His Excellency the PRESIDENT—As I understand the scope of the Bill, the first question of principle, which applies to the whole of it, is whether all the revenue laws of this Presidency shall be embodied in one Code. To that, I think, no one can object. The next question is this. As the Bill treats of a great variety of subjects in different chapters, are all of them fit subjects to be introduced into the Code? This must be a matter for the careful consideration of the Select Committee, who, having arrived at a conclusion as to what subjects should be retained in the Bill, will proceed to the examination of the chapters relating to them respectively. It seems to me also that it would facilitate the business of the Council, if the Committee could forward separate reports upon each important part of the Bill as completed. These reports with the chapters as amended could be translated and circulated for observations; and thus great progress might be made with the measure when the Council assembles at Poona. On this understanding the Honourable Member may perhaps be disposed to withdraw his proposal to defer the First Reading.

The Honourable Colonel ANDERSON—I wish to make a few remarks on the subject of the discussion which has now taken place regarding the position of landlords and tenants. There are two very different classes of each; first, landlords holding land directly under Government, and sub-letting those lands to other persons. These tenants frequently hold under written agreements, but often by some kind of understanding with their landlords. The question of regulating the relations of this class is a large and complicated one, and I do not propose to go into it now. The

Colonel Anderson explains the position existing between certain landlords and tenants, and points out the necessity for legislation in order to prevent the wrongful absorption of land by landlords.

second class of landlords and tenants are the inamdars of whole villages, and the people cultivating the lands of those villages. The inamdar was granted the right to receive the Government revenue which the cultivators would pay to him instead of into the Government treasury. He had also a full right to dispose at his pleasure of lands which were waste, at the time of the grant of the revenues of the village to him, but he had no right whatever over the lands held by a cultivator so long as he paid his customary revenue. During the last twenty-five years land has been acquiring an ever-increasing value, and inamdars have all over the country, not in Dharwar only, been endeavouring to increase the revenue leviable from the cultivators, or to eject them from their lands, and to a great extent they have succeeded in doing so. In one case a decision was given by a Court of Law that the power to increase assessment by an inamdar was not in any way limited by the ancient kumal or standard assessment of the village, and that he was free to impose what assessment he pleased. No appeal, I believe, occurred in this case, though regarding the violation of equity and the custom of the country, there would appear to be no doubt. I was some ten years ago asked by the Collector of Dharwar to meet with him some inamdars and their tenants between whom a dispute regarding an increase of assessment had occurred. The inamdar had given notice to his ryots of his intention to levy an assessment very much in increase of that of the previous year, in fact, an excessive assessment. The inamdar made no secret of his object and intention. He said "if the ryot will pay me even ten rupees per acre this year, I will demand more next year. I don't in fact want his money at all. I want the land." Cultivators in inam villages have frequently rights far antecedent even to those of inamdars to receive the revenues from them, as Government would eject no ryot who paid the revenue due from him, which is, in fact, the sole condition on which he holds the land, so the inamdar, whose right is strictly confined to the right of receiving the Government revenues, can have no right to eject an ancient cultivator except under the same circumstances. A clear definition of the rights of each party in this case will be of immense benefit to a very large portion of the ryot population, for, on the average, it may be said, that at least one-tenth of the villages of the Deccan and Southern Maratha Country are held by inamdars. With reference to the question of the Select Committee, I would only observe that the Bill after revision by the Select Committee would go out before the public in a much more complete and final form than it previously could. We have already heard complaints that Bills are materially altered in Committee after first publication, and that the public had no opportunity of considering them in their revised form. Translation and publication after revision would obviate this complaint.

Mr. Gibbs thinks that each part of the Bill should be separately reported upon, and the reports translated and published.

The Honourable Mr. GIBBS—Sir,—There can be no doubt that the principle adopted by the Government of India of codifying the law on different subjects is one which has caused considerable benefit to all concerned in knowing or carrying out the law. Therefore I think that, in determining to codify the revenue laws of this Presidency, the Honourable Mr. Chapman has followed an excellent precedent, and I feel certain that if this Bill is passed, it will be a matter for gratification to all who are affected by the present fragmentary laws. With regard to the manner in which the Bill ought to be treated, I am inclined to agree with His Excellency the President. The subjects are so various and the Bill altogether so comprehensive, that I think it would be a matter of great difficulty for the Committee to prepare one report upon the whole Bill, and, moreover, to do so would require a very long time. If

they reported upon each of the fifteen chapters of the Bill *seriatim*, I think business would be greatly facilitated. This is not a new law, although there are certain portions of it original; and there need be very little difficulty in dealing with the greater portion of the Bill. Each report might be published and translated. I see no necessity for hurrying on the Bill too rapidly; whether it is passed this monsoon or next monsoon is of less importance than having a full and thorough discussion of it both here and by the public press; and I therefore think that if His Excellency's suggestions and those I have thrown out were adopted, the Bill will be more likely to become a satisfactory law than if we adopted the ordinary course regarding it.

The Honourable Mr. CHAPMAN remarked that nine-tenths of the Bill related to purely departmental concerns, and did not affect the general public.

His Excellency the PRESIDENT—The Honourable Mr. Chapman's remark calls up prominently a difficulty which it will be necessary for the Select Committee to decide. As a portion of the Bill has, strictly speaking, nothing to do with a codification of revenue laws, and the newly-introduced matter is likely to cause some discussion, it should be for the consideration of the Committee whether the Council ought not to make the measure strictly one of codification, leaving all foreign matter to be dealt with in other Bills.

The President doubts the advisability of making the Bill anything but a codification.

The Honourable Mr. GIBBS and the Honourable Mr. CHAPMAN concurred in His Excellency's views.

The Honourable NACODA MAHOMED ALI ROGAY said that if the reports of the Select Committee were translated and circulated, he would have no objection to withdraw his amendment.

His Excellency the PRESIDENT said the other Members of Council would not object to this course.

The amendment was then withdrawn, and the Honourable Mr. Chapman's motion, that the Bill be read a first time, agreed to.

Bill read a first time, and referred to a Select Committee.

The Bill was then referred to a Select Committee composed of the Honourable Messrs. Rogers, Gibbs, Chapman, Colonel Anderson, Rao Sahib Vishvanath Narayen Mandlik, Nacoda Mahomed Ali Rogay, and the Advocate General, with instructions to submit separate reports on the several subjects or chapters contained in the Bill, as soon as they may find themselves in a position to do so, with a view to their translation and publication.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Governor in Council,

JOHN NUGENT,
Acting Under Secretary to Government.

Bombay Castle, 28th January 1875.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Bombay on Wednesday, the 31st March 1875, at noon.

PRESENT:—

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable COLONEL M. K. KENNEDY.

The Honourable J. K. BYTHELL.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

The Honourable E. W. RAVENSCROFT.

Affirmation of office, &c., taken by Mr. Scoble and Mr. Ravenscroft.

The Honourable the Advocate General and the Honourable E. W. Ravenscroft took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to the Council.

The following papers were presented to the Council by Mr. Nugent, Under Secretary to Government :—

1. Letter from the Secretary to the Government of India, No. 91, dated 27th January 1875, returning with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the " Bill to amend the law relating to hereditary offices."

2. The following letter from the Secretary to the Government of India, No. 123, dated 13th February 1875 :—

FROM

WHITLEY STOKES, ESQUIRE,

Secretary to the Government of India, Legislative Department,

To

J. NUGENT, ESQUIRE,

Acting Under Secretary to the Government of Bombay.

Fort William, the 13th February 1875.

SIR,—I am directed to acknowledge the receipt of your letters No. 366, dated 4th December 1873, and No. 31, dated 29th January last, addressed to the Secretary to the Government of India in the Department of Revenue, Agriculture and Commerce, with the former of which was forwarded for the assent of His Excellency the Viceroy, the Bill for enabling Government to levy tolls on public roads and bridges in the Presidency of Bombay.

2. His Excellency the Governor General regrets that he is obliged to withhold his assent from the measure, and in accordance with the rule prescribed by the Indian Councils Act, Section 40, I am directed to signify the following reason for this course.

3. The Bill purports to repeal, so far as it affects Bombay, Act XV. of 1864 of the Governor General's Council, which was passed since the Indian Councils Act, 1861, came into operation, while the Bombay Legislative Council has only power to repeal or amend Acts of the Legislative Council of India passed before the 16th November 1861, when the Councils Act came into force.

4. Though this is a point of form yet it is a very important one, and His Excellency cannot deliberately sanction any action of the Bombay Legislative Council in excess of their lawful powers.

5. I am to state that His Excellency sees nothing objectionable in the substance of the Bill, and that an Act might be passed in the Council of the Governor General to legalize the levy of tolls in the Bombay Presidency, if that course should appear to the Government of Bombay to be more convenient than that the Bill should be re-introduced, with the necessary modification in the local Legislative Council.

6. I am in conclusion to express the Viceroy's regret that His Excellency's opinion with respect to this Bill should, through accident, not have been officially communicated to the Government of Bombay many months ago.

I have, &c.,
(Signed) WHITLEY STOKES,
Secretary to the Government of India.

Honourable Mr. Rogers moves second reading of Bill (No. 2 of 1874) to amend Bombay Act No. I of 1865.

The Honourable Mr. ROGERS—Your Excellency, I beg to propose the second reading of the Bill (No. 2 of 1874) to amend Bombay Act No. I of 1865. The general scope of the measure was explained by me when I introduced the Bill last October. The Bill has not been referred to a Select Committee, but although it has been before the public since October no objections have been raised to its general provisions. In case Honourable members should have forgotten the purport of the Bill, I may be permitted to explain that the only object of the Bill is to enable Government to postpone the date up to which land may be given up under the Survey Settlements Act in the year in which an original or revised survey settlement may have to be introduced from the 31st March to the 5th June or any date between these two dates. The object of this is to give the Survey Department more time to prepare all the detailed measurements and have all the necessary papers made out which may be required before the introduction of the survey settlement. Up to this time also it has been the custom, sanctioned by Government, that in the year in which a revised settlement was introduced the difference between the old and the new assessments should be remitted. That custom is made plainer in the proposed Act, and practically what has been authorised hitherto by Government and has been the custom of the country will be legalized. In addition to this another boon is conferred upon the occupants of land. You will observe that in clause three of the second section of this Bill it is proposed that in the year after the revised settlements shall have been introduced, landholders,

if they choose to throw up any land before the 31st March of the following year, may be at liberty to do so instead of being restricted, as under the present custom, to throwing it up at the introduction of the settlement. With these words I beg to move the second reading of the Bill.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK said he would not oppose the Bill at this stage, because since its introduction to the Council in October last the Revenue Officers' Code Bill had been introduced, which dealt more exhaustively with the matters contained in the Bill before the Council. After what the Honourable Mr. Rogers had stated he still thought that the objection he had taken to the Code Bill remained as regards the Bill before the Council, namely, whether in trying to remedy a defect other evils might not be introduced. As to the case cited in the Statement of Objects and Reasons he begged to observe that the suit arose before the High Court because old customs had not been carried out. A new survey had been introduced in April, and the old occupant was sued for not having relinquished his land on the 31st March preceding.

The Bill read a second time.

The Honourable Mr. ROGERS' motion was agreed to, and the Bill read a second time.

Honourable Mr. Rogers moves that the Bill be read in detail in full Committee of the Council.

The Honourable Mr. ROGERS then proposed that the Bill be read in detail in full Committee of the Council.

The Honourable Khan Bahadoor PADAMJI PESTONJI thought with reference to section I. that the 1st August would prove an exceedingly awkward date for the incoming of a new occupant, and he suggested that an earlier date—say, the 1st June—should be agreed upon. Under the section as it stood, an old occupant's lease would not expire until the 31st July and he might be disposed to keep possession until the very last day, so that the new occupier would have very little time left to enter upon possession if he determined to do so upon the 1st August.

The Honourable Mr. ROGERS—The reason for adopting this year (from the 1st August to the 31st July) was that that was the year for which all the revenue accounts were made up. The dates mentioned in the section have nothing whatever to do with the relinquishment of land or otherwise.

The Honourable Mr. GIBBS considered that the section had nothing to do with the question of occupancy.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK understood the first clause to be simply a statement of what the revenue year is to be.

His Excellency the PRESIDENT thought that as the section was almost an interpretation of what a 'year' should be, the Honourable Khan Bahadoor's objections, if he had any, could more appropriately be discussed in connection with the following sections.

Section II., clause 1, was then read.

The Honourable Mr. GIBBS—This is an improvement upon the law as it stands at present, when, supposing, in the event of the introduction of a new settlement, the papers could only be got ready and published on the 1st March, the occupiers would only have till the 31st March to think over the matter and decide whether they would give up their lands or continue to hold it under the new settlement. That was a hardship, and in order to obviate it I understand this clause has been framed.

His Excellency the PRESIDENT—Supposing a new settlement was introduced in a village on the 20th July, I apprehend that under this section a man might not have to give notice of his intention to relinquish till the following June? If, however, the settlement were not introduced till the 4th June, a man might have barely a day left to give a decision about keeping on his land.

The Honourable Mr. ROGERS—That might be the effect in the case cited, but settlements are rarely introduced so late as June.

The Honourable Mr. RAVENSCROFT—Settlements are generally introduced in February or the early part of March.

His Excellency the PRESIDENT thought that this might be made clear in the Bill.

The Honourable RAO SAHIB concurred.

The Honourable Mr. ROGERS—The object of this Bill is to give more time to the ryots instead of to abridge it.

The Honourable Mr. GIBBS—It was found under the present law that there really was not time for the landholders to make themselves acquainted with the terms of the new settlement before they were called upon to decide upon accepting them, and therefore this Bill was introduced with the object of giving them more time for consideration.

His Excellency the PRESIDENT—Look to the disputes regarding settlements which have recently occurred. Was it possible that a man could be called upon in half an hour to decide upon retaining or giving up his land?

The Honourable Mr. RAVENSCROFT—That was the law as it formerly stood. To-day (31st March) five revised assessments are to be introduced throughout the country, in some of which a considerable enhancement of revenue has taken place. In many instances landholders have not had more than a week's time to decide as to whether or not they would throw up their holdings. If this Bill had been in existence they would have had up to the 5th June to consider their decision instead of being obliged to give their decision by the 31st March.

His Excellency the PRESIDENT—Then a man might be asked on the last day whether he would give up his land or accept the new settlement rates?

The Honourable Mr. RAVENSCROFT—Yes, but practically he would have plenty of time to consider his decision.

The Honourable Mr. GIBBS—By the present Bill, however, the time may be extended to the 5th June, so that Government would always have it in its power to see that the people got fair notice.

The Honourable Mr. RAVENSCROFT—In point of fact this Bill may shortly be described as a Bill to give tenants two months and five days more time in which to make up their minds than they now have.

His Excellency the PRESIDENT—That is what is now said will be given, but there does not appear to me to be any guarantee in this Bill that a man shall have due notice of proposed alterations in the rates of assessment.

The Honourable Mr. GIBBS—The extension of time rests with Government, who will surely see that the ryots are allowed plenty of time.

The Honourable Mr. BYTHELL asked whether it could not be stated in the Bill that a certain time of notice must be given to landholders.

The Honourable Mr. ROGERS—By the next clause you will perceive that each man will have practically till March in the subsequent year to consider whether or not he will retain his land at the new rates of assessment; for if at the end of that period he does not wish to retain his land the difference between the old and the new rate of enhancement will be returned to him, and he may vacate by giving due notice of his intention to do so.

His Excellency the PRESIDENT thought that to the end of the clause some such words as the following should be added—"Provided that not less than fifteen days' notice of the date so fixed shall be given in the village."

The Honourable Mr. GIBBS thought there was no necessity for these words unless Government meant to declare its distrust in itself. It would be the fault of Government if the ryots were ever left without due notice.

His Excellency the PRESIDENT, referring to what the Honourable Mr. Rogers had said about the powers of the second clause, said that they certainly gave some advantage to a man who considered he had made a bad bargain in taking the land at the new rate of assessment; but in the case of men hastily throwing up their land without having had time to consider the effects of the new settlement rates, there would be no redress. A man might be disgusted at the old rates being interfered with, and say hastily he would not pay the enhanced rates, although if he had leisure to look at the matter he might come to a different decision.

The Honourable Mr. GIBBS—A man never willingly gives up a bit of land even though retaining it may ruin him.

The Honourable RAO SAHIB thought that would be rather an unsafe principle to guide the Council.

The Honourable Mr. ROGERS—As a matter of practical experience, I may say that I myself have given out perhaps 100,000 fields in this way—namely, the two assessments, old and new, being read out to the people, and the people being asked what they would decide upon—and I have never seen the people show the slightest hesitation in expressing their opinion, yes or no.

The Honourable Mr. RAVENSCROFT suggested the addition to the section of the words "provided that no orders for introducing revised assessment shall be issued by Government later than the 31st March."

The Honourable Mr. ROGERS—I do not think it would be advisable to restrict Government in this way. Even if a settlement were not introduced until the 3rd or 4th June, there would be no occasion for an occupant to decide there and then whether he would throw up, because he has practically till the end of the following March to experiment with his field under the new terms of settlement, and he may then give it up if he chooses.

The Honourable Mr. BYTHELL remarked that the proposed alteration would not tie the Government down to a later period than it was tied to at present.

The Honourable Mr. ROGERS—The object of this Bill is also to enable Government to introduce settlements later than the 31st March.

After some further conversation, it was agreed to amend the clause by deleting "later" in the fifth line, and substituting "earlier than the 31st March or later than" for the words "subsequent to" in the same line.

On clause 2 being read, the Honourable Mr. ROGERS called attention to the wording of the clause, which showed that it would not be optional with the authorities to remit, but that they must remit according to the expression "shall."

The clause was agreed to.

Clause 3 was agreed to.

Section III. was amended as follows :—This Act shall be read with and taken and construed as part of Bombay Act No. I. of 1865.

The section was then agreed to.

Honourable Mr. Rogers moves third reading of Bill.

The Honourable Mr. ROGERS then moved that the standing orders be suspended and the Bill read a third time and passed. His chief reason in desiring that the Bill should be passed as quickly as possible was because of sundry revisions of settlement for which the orders had just been issued, as there really had been no time to introduce them before that day (the 31st March).

The Honourable Mr. GIBBS and the Honourable the ADVOCATE GENERAL thought there was no occasion for the suspension of the standing orders, as no alteration upon the principle of the Bill had been made.

His Excellency the PRESIDENT suggested a slight alteration in the second clause of Section II. which was amended as follows :—"not be payable" was substituted for "be remitted" in the sixth line of the clause, and in the following line "shall be" was inserted before the word "levied."

The Honourable Mr. ROGERS suggested that the clause might be further altered so as to make it in accord with the actual custom which went beyond what was stated in the clause, and which custom was that where a new assessment was less than the old one only the new should be taken.

His Excellency the PRESIDENT did not think this alteration was necessary, as the people would not be likely to make any objection to the clause as it stood.

Bill read a third time and passed.

On the motion of His Excellency the PRESIDENT, the Bill was then read a third time and passed.

Mr. Ravenscroft substituted for Mr. Chapman on the Select Committee appointed to consider the Revenue Code Bill.

The Honourable Mr. Ravenscroft was placed on the Select Committee on the Revenue Code Bill in place of the Honourable Mr. Chapman.

The Honourable Mr. RAVENSCROFT brought to the notice of the Council that many revenue officers had represented to him that they had not had time to give that consideration to the Revenue Code Bill which a Bill of such importance required.

His Excellency the PRESIDENT explained the course regarding the means of giving publicity to the Bill which had been adopted at the last meeting of Council on his suggestion.

The Honourable Mr. RAVENSCROFT thereupon expressed himself satisfied that heads of departments would have an opportunity of considering the Bill.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Under Secretary to Government.

Bombay, 31st March 1875.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Thursday, the 23rd September 1875, at noon.

PRESENT:

His Excellency the Honourable Sir PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *presiding.*

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable Major-General M. K. KENNEDY.

The Honourable E. W. RAVENSCROFT.

The Honourable Colonel W. C. ANDERSON.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Khan Bahadur PADAMJI PESTONJI.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

Affirmation of office, &c., taken by Mr. D. Graham and Rao Bahadur Becherdass Ambaidass.

The Honourable Mr. DONALD GRAHAM and the Honourable Rao Bahadur BECHERDASS AMBAIDASS took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to Council.

The following letters were presented to the Council:—

Letter from the Secretary to the Government of India, conveying the assent of His Excellency the Governor-General and Viceroy to the Bill to amend Bombay Act I. of 1865.

Letter from the Secretary to the Government of India, communicating the sanction of His Excellency the Governor General to the Bill for enabling Government to levy tolls on public roads and bridges with the proposed clause as to exemptions from toll being taken into consideration by the Local Legislative Council.

The Council then proceeded to the consideration of the Bills and Orders of the day.

Mr. Ravenscroft moves the first reading of the Bill to amend the law relating to the Land Revenue administration of the city of Bombay. Explains that Bill is introduced because old regulation had been found deficient, and that a separate Bill for the town and island of Bombay is necessary because revenue administration system there differs from the system pursued in the Mofussil.

The Honourable Mr. RAVENSCROFT, in moving the first reading of Bill No. 2 of 1875 (a Bill to amend the law relating to the Land Revenue administration of the city of Bombay), said:—It was originally intended to devote a chapter in the Land Revenues Bill introduced last January to the town and island of Bombay; but on further consideration it was ascertained that the land revenue administration of the rest of the Presidency was not similar to the system carried on in the town and island of Bombay, and it was therefore considered advisable to include the provisions required for the town and island of Bombay in a

separate Bill. This separate Bill he now laid before the Council. Some of the members of this Council were aware that the law regulating the land revenue of the city of Bombay at the present time was Regulation XIX. of 1827. At the time that Regulation was passed no doubt its provisions were very suitable to the purposes for which it was intended. But as time went on, it was found that several modifications and alterations were requisite, because the old Regulation was not adequate to meet all the purposes for which it was originally passed. With the advice and concurrence of the Revenue Officers of Bombay, the Bill which he had now the honour to introduce had been drawn up with great care. The principles embodied in Regulation XIX. of 1827 had to a great extent been embodied in the present Bill No. II. of 1875. Certain alterations and modifications had, however, been introduced because they were essentially necessary; but all the amendments had been framed solely with the legitimate view of maintaining the lawful interests of the city at the same time that the rights of land-holders were left uninjured. When the Bill came to be discussed section by section, honourable members might differ as to particular portions of it, but the general principles would doubtless be approved. He might mention that there was one part of the Bill which was wholly new, and on this he would say a few words. It related to the Survey recently completed under the able management of Colonel Laughton and to the maintenance of the boundary marks which were found necessary for demarcating the different properties. This survey was carried through at great expense, and many of the survey records were most invaluable documents. It was important to maintain these records properly, and it was still more necessary to maintain due efficiency regarding the boundary marks. Different sections in this Bill had been framed to meet these contingencies. The provisions generally of the Bill had been borrowed from the law on the subject which had been in existence in the Mofussil for some time and which had been found to answer its purpose well; and he had no doubt that the Bill now introduced to the notice of the honourable members of the Council would be found to carry out the views of those by whom the Bill had been prepared, and by whom alterations in the existing Regulation were considered necessary. It was hardly necessary, he presumed, to explain that the Bill was meant to apply solely to the city of Bombay. It was therefore essential that a full discussion of the measure should take place in Bombay, where the persons interested resided, and where moreover the survey records were kept. With the concurrence, therefore, of His Excellency the President, he would propose that nothing further be done with the Bill at present than to refer it to a Select Committee, whose report should be considered along with the Bill in Bombay.

His Excellency the PRESIDENT put the motion, that this Bill be read a first time.

The Honourable Rao Saheb VISHVANATH MANDLIK said he had no objections to offer against the Bill at this stage. He thought the principle that the Revenue Administration law for the city of Bombay required revision might be accepted, but there were some matters both of procedure and substantive law in regard to encroachments, (amongst others,) which would require very careful consideration. The Select Committee would doubtless devote their attention to these matters, and in the meantime he would say nothing further about the Bill.

The Honourable Khan Bahadur PADAMJI PESTONJI remarked that Section 28 would require very great consideration.

His Excellency the PRESIDENT—Greater consideration in favour of those who have made encroachments ?

The Honourable Khan Bahadur—No ; but I think that the section as it stands is too severe. This, however, can be considered in Select Committee.

The Honourable Mr. ROGERS—With regard to what the Honourable Khan Bahadur has said about the penalties upon encroachments, I need only mention that the sections have been founded on the actual practice of a great many years.

The Honourable Khan Bahadur—There is a difference between practice and law.

The Honourable Mr. GIBBS—We are only going to make the practice into law.

Bill read a first time and referred to a Select Committee.

The Bill was read then a first time.

The Honourable Mr. RAVENSCROFT begged to move the appointment of the following Select Committee on the Bill :—The Honourable Mr. Rogers, the Honourable Major-General Kennedy, the Honourable Rao Saheb Vishvanath Mandlik, the Honourable Mahomed Ali Rogay, and the mover.

The motion was agreed to.

It was agreed that the Select Committee should report on the 8th December 1875, and that the report should be translated into Guzerathi and Marathi.

The Honourable Mr. GIBBS having remarked that a petition on the Bill had been received, it was agreed that the petition be referred to the Select Committee.

Major-General Kennedy moves the first reading of the Road Tolls Bill.

The Honourable Major-General KENNEDY, in moving the first reading of Bill No. 3 of 1875 (*a Bill for enabling Government to levy Tolls on Public Roads and Bridges in the Presidency of Bombay*), said that it had been previously before the Council in a different form, and would probably have become law by this time had it not been pointed out by the Government of India that this Council had gone somewhat beyond its powers in repealing Act XV. of 1864. The Bill had been returned by His Excellency the Viceroy in order to be amended in this respect, and therefore the part relating to Act XV. of 1864 had been omitted in the present Bill. Opportunity had at the same time been taken to make a further amendment so as to enable Government to exempt such persons as they may think fit from the payment of tolls. In other respects the Bill was almost identical with the previous Bill.

Rao Saheb Vishvanath Mandlik objects to tolls and to taxing foot passengers except in special cases, such as in the case of bridges over rivers where people had to pay for ferries.

The Honourable Rao Saheb VISHVANATH MANDLIK said he had carefully read the discussions which had taken place on this Bill when it was previously before the Council, and also those which had taken place upon it since. It was, no doubt, correct to say that this Bill was now, so to speak, coming only technically before the Council, because of a certain error for which, perhaps, this Council was scarcely responsible. But at the same time, since the responsibility now rested with the Council of passing the Bill in its present form, he thought it right to say that there were several matters in it to which he entertained very grave objections. He objected, in the first place, to Section 2, which was a sort of retrospective section—the Legislative remedy for such errors as this section sought to cure. In the next section he objected to lines 8 and 9—that is to say, he thought it advisable that the funds which had been expended on making roads under Act III. of 1869 should not be made the cause of again taxing the people by levying tolls upon these very roads a second time. He understood that it was difficult to make a clear distinction

between provincial roads and local funds roads, and also that there was a scarcity of funds for roads; but his objections were, first of all, to tolls in general as a source of revenue, and in the next place, to tolls being placed too near each other. In other countries there might be tolls every six or eight miles; but he thought that that was no justification of repeating what he considered an error in any revenue administration. He would pay double the amounts laid down in the schedule, but it was not these amounts that people feared; it was having to pay them so often. Between Paladpur (or rather Kineshvar) and Nagotna there were five tolls, and moreover there were municipal tolls. Now, that was a state of things which should be guarded against in this country, where it is not so much the amount to be paid as the number of times it was required to be paid, which requires to be seriously considered. As regards taxing foot passengers, he noticed that the Council had actually gone beyond Act VIII. of 1851; but as the present Bill was in accord with the Act of the Government of India (Act XV. of 1864), it might be assumed that the members of this Council were legislating in the footsteps of the higher Legislature. But in his opinion this Council was to a certain extent an independent Legislature, and except in those cases where taxes on foot passengers would be justifiable—such as in the case of bridges over navigable rivers where people had formerly to pay ferries—he did not think a foot passenger's tax should be sanctioned by the Council. It might be said that there was power reserved to the Executive Government to exempt persons, and that as a matter of fact no tax upon foot passengers was levied except at Matheran and some other places, but here the law was going to be entered on the statute book, and if it was not necessary, he did not see why the Council ought again to legalise it.

Bill read a first time.

After some discussion, it was decided that it was unnecessary to refer the Bill to a Select Committee, as all the points raised by the Honourable Rao Saheb could be discussed in full Committee of the Council.

The Bill was then read a first time.

Mr. Gibbs moves the first reading of the Bill to enable Municipality of Bombay to subscribe Rs. 50,000 towards the reception of His Royal Highness the Prince of Wales.

The Honourable Mr. GIBBS begged to move the first reading of Bill No. 4 of 1875 (*a Bill to empower the Municipal Corporation of the City of Bombay to aid in the reception of His Royal Highness the Prince of Wales on the occasion of his visit to India*). He said:—The Statement of Objects and Reasons showed the objects of the Bill very clearly. The Municipality of Bombay was anxious to contribute to the Fund which had been raised by private subscription to make a right hearty and loyal reception of His Royal Highness the Prince of Wales on his approaching visit; but doubts arose as to whether the Corporation had authority, without special legislative powers, to vote money for such a purpose. Hence the present Bill had to be introduced to enable the Municipality to subscribe towards the Reception Fund. The sum it proposed to give was Rs. 50,000, and the second section of the Bill showed by what means this sum would be recouped by payments spread over three years. The Corporation of Bombay is bound, at the end of every year, to have a cash balance of one and a half lakhs of rupees; and it was now proposed to have a cash balance at the end of 1875 of only one lakh; while at the end of 1876 and 1877 it should be one lakh and seventeen thousand rupees and one lakh and thirty-four thousand rupees respectively.

The Honourable Rao Saheb VISHVANATH MANDLIK said that speaking for himself as a member of the Corporation he approved of the Bill. It had been unanimously supported by the members of the Corporation, and it was a matter in which the native community took very great interest.

Native members, on behalf of native community, express their approval of Bill.

The Honourable Khan Bahadur PADAMJI PESTONJI said he did not think that the Corporation could spend its money in a better way than that which was indicated in the Bill.

The Honourable Mr. GIBBS said that as the Bill had the entire approval of the representatives of the native community, and moreover had the approval of the Corporation of Bombay, the Government of Bombay and His Excellency the Viceroy, he would ask His Excellency the President to suspend the standing orders and permit the Bill to be passed at once.

His Excellency the PRESIDENT suspended the standing orders, and the Council proceeded to read the Bill a second time. Sections 1 and 2, the preamble and title, were agreed to without alteration. The Bill was then read a third time and passed.

Standing orders suspended, and the Bill read first, second, and third time and passed.

The Honourable Mr. ROGERS, in moving the first reading of Bill No. 5 of 1875 (*a Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*), said that the objects were fully set forth in the Statement of Objects and Reasons. The members of this Council would be aware that the Collectorates in the Bombay Presidency are sub-divided into small portions which are presided over by native revenue officers, who are therefore conveniently situated for the purpose of settling on the spot, and without loss of time, any dispute which may arise with regard to possession at any time of the year, but especially at the critical period, the monsoon. It was therefore enacted in 1864 that the Mámlatdárs should have summary jurisdiction in cases where people had been dispossessed or kept out of possession of lands, premises, trees, crops, fisheries, and of all profits arising from the same. That Act had been in force for eleven years, but it was found to be defective, inasmuch as it gave no powers to the Mámlatdárs to settle disputes with regard to the rights to wells, water-courses, &c. A delay of a few days in deciding the right to take water from a well or water-course might prevent a field from being cultivated at all, and a whole season's crop might be lost. These Mámlatdárs were as well able to settle disputes regarding the possession of water as they were with regard to land, &c.; and this Bill therefore proposed to make it lawful for them to give immediate possession of the right to water from wells, tanks, canals, or water-courses, or of the profits arising from the same. The procedure of the courts presided over by the Mámlatdárs in these matters had been found to be defective, and the opportunity had been taken in the present Bill to amend it. Another matter which had been omitted from the original Act, and which it had now been found necessary to supply, was a provision relating to the question of costs. This Bill provided for the expenses of witnesses. It also proposed to lay down that decrees should be executed through the village officers. The only other point he would wish to notice was the question whether decrees passed in the Mámlatdárs' Courts should be subjected to appeal to the higher authorities. The framers of the Bill had come to the conclusion that as possession was merely meant

Mr. Rogers moves the first reading of the Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts.

to be temporary and to be carried out only until the dissatisfied party should obtain a verdict in a Civil Court, it was upon the whole advisable that the law should remain as it is, and that no appeal should lie from the decision of the Mámlatdárs.

The Honourable Mr. GIBBS said that it was advisable for the Council to know that by a decision of the High Court, before Sir Richard Couch and Messrs. Newton and Warden, Judges, it was found that this power of the Mámlatdárs to give summary possession was not confined to Mámlatdárs' Courts alone, for since the introduction of the Civil Procedure Code of 1859 the civil courts were invested with powers co-extensive with those of Mámlatdárs' Courts. There was therefore no occasion for a person to go into the Mámlatdárs' Courts, for a Munsiff's Court would do just as well.

Mr. Gibbs mentions that civil courts have co-extensive powers with Mámlatdárs' Courts.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK thought that the Mámlatdárs' Act should now be amended thoroughly, so that its procedure might, as far as possible, be on a par with the amended procedure which was being devised for the Courts of Civil Judicature. Questions as to possession were often, he had found, decided by Mámlatdárs in a way which might be amusing to themselves, but which was certainly not amusing to the people who had to suffer. He also hoped that Kulkarnies and Patels would not be permitted to have anything to do with the execution of decrees, which ought to be carried out, as they had been hitherto, by the Mámlatdárs' establishment. Local feeling in village communities was in itself a sufficient reason why village officers should not be asked to carry out the Mámlatdárs' decrees. If necessary, one or more bailiffs should be employed, and the necessary fees should be charged to suitors.

Rao Saheb thinks opportunity should be taken to make proceedings in Mámlatdárs' Courts similar to proceedings in Civil Courts. He also objects to village officers executing decrees of Mámlatdárs.

After some further discussion, the Honourable Mr. Rogers' motion was agreed to, and the Bill was read a first time.

The Honourable Mr. ROGERS proposed that the Bill be referred to a Select Committee composed of:—The Honourable Mr. Gibbs, the Honourable Colonel Anderson, Rao Saheb Vishvanath Narayan Mandlik, Rao Bahadur Becherdass Ambaidass, and the mover.

The Bill read first time and referred to a Select Committee.

This was agreed to, as also that the Select Committee should submit their report on or before the 15th October, and that the report should be translated into Marathi, Guzerathi, and Canarese.

The Honourable Mr. RAVENSCROFT, for the reasons previously mentioned, made the following notice of motion :—That the Bill No. 10 of 1873 (Bill to provide for the Survey, &c., of the lands of the City of Bombay and Island pertaining thereto) be withdrawn.

Bill No. 10 of 1873 withdrawn.

The motion was carried.

His Excellency the PRESIDENT then adjourned the Council till Thursday, the 30th September 1875.

By order of His Excellency the Governor in Council,
W. LEE WARNER,
Acting Under Secretary to Government.

Poona, 23rd September 1875.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the Provisions of "THE INDIAN COUNCIL'S ACT, 1861."

The Council met at Poona on Thursday, the 30th September 1875, at noon.

PRESENT:

His Excellency the Honourable Sir PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable Major-General M. K. KENNEDY.

The Honourable Colonel W. C. ANDERSON.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Khan Bahadur PADAMJI PESTONJI.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

Major-General Kennedy moves the second reading of the Road Tolls Bill, and points out that as the Bill only comes before the Council in order to adjust a technical error it is too late for Hon'ble members to object to the principle of it.

The Honourable Major-General KENNEDY moved the second reading of Bill No. III. of 1875: a Bill for enabling Government to levy tolls on public roads and bridges in the Presidency of Bombay. He said—At the last meeting of Council my Honourable friend Rao Saheb VISHVANATH MANDLIK took exception to the principle of the Bill. Now, even if this were an abstract question and we were taking it up for the first time I should fail to agree with him; but it is not an abstract question; tolls having been levied by the Government of India since 1851, while as a matter of fact we have been levying them in this Presidency since 1864. This Bill therefore involves very practical issues, and it cannot be said to come as a surprise upon the people. Under the present system by which we levy tolls we collect about 7 lakhs of rupees per annum—a revenue which we cannot consent to forego for abstract considerations in the present state of our finances. I trust, therefore, that my Honourable friend will not press his objections to the principle of the Bill, because I think it is now altogether too late to do so. The Bill has been returned to this Council merely for a technical reason, because this Council, through an inadvertence, had repealed an Act of the Government of India. In its present amended shape it has been approved of by the Government of India, and I may observe that if it were not passed in this shape, we could still continue levying tolls under the Acts of the Government of India. We could even levy tolls at a higher rate than we propose to do under this Bill, because when we discussed this Bill in 1873, and took into consideration the schedules of the Bill, we reduced the rates in the Government of India schedules very considerably. As regards the objection which has been taken to section 2, that it is a retrospective section, all that can be said is that

it is possible—I do not say it will be the case—that if this section were struck out, that we should have a crop of law-suits against Government springing up over the country, because through the mistake of not extending the Government of India Act of 1864 to this Presidency, it may be contended that there was a want of legal authority for the course we have pursued in levying tolls since that date. The other points to which exception has been taken are merely matters of detail, and can be considered when we come to the second reading of the Bill. I now beg to move that this Bill be now read a second time.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—Your Excellency—I had not intended to speak upon the second reading of the Bill, because I understood, although my observations were directed to the inadvisability of tolls as a rule, that this Bill came before us as it were technically, and therefore it would be too late now, as the Hon'ble Major-General Kennedy has pointed out, to go back upon what has already been considered and passed. However, I think that in the case of *post facto* provisions of law, if ought to be a general rule as far as possible that in Acts relating to the revenue or to abridge contracts care should be taken to pass as few retrospective sections as possible. On that point I fear I should not consider it advisable to recede from what I hold to be the proper law for all countries and for all times. In the case of the present Bill, I think it has been agreed that the sanction of the Government of India to tolls has been in existence for a considerable time past, and that although by some mistake the Government of India's law was not extended to this Presidency, yet as the officers in this Presidency had been acting *bonâ fide* upon what they believed to be the law, it was desirable that the possibility of law-suits should be avoided. I shall not vote for the second section of the Bill, nor shall I vote against the second reading of this Bill; but in the course of the second reading I shall have several amendments to propose.

Rao Saheb Vishvanath Mandlik says he will not oppose the second reading, but he would not vote for the second section nor for the section which empowers Government to levy tolls upon roads constructed from Local Funds.

The Honourable DONALD GRAHAM—Your Excellency—I am entirely opposed to the principle of this Bill, and were it a measure brought forward here for the first time, I should strongly oppose its second reading. Perhaps on bridges which there might be some difficulty in completing without tolls, and which were urgently required for public convenience, these tolls might be justifiable; but as regards tolls on roads I think it is not only impolitic to tax traffic, but it is a most vexatious and expensive way of raising revenue. In England there is a strong feeling against tolls, and in many counties they have been done away with altogether; and I believe that but for the complications which have naturally arisen out of a system which has lasted so long, the probability is that tolls ere this would have been abolished all over the country. Here in this country it seems to me that the people who are to be taxed by this Bill are the same as those who have already to subscribe to the Local Funds; and I therefore think it is a pity to keep up two sets of tax-gatherers when one might suffice. I don't wish to infer from this that the Local Fund cess should be increased, though even that would be a lesser evil, but the general feeling of those with whom I have discussed this Bill seems to be that the cess ought to be sufficient to maintain the roads, and I think that if Government could see its way to make it suffice, and abolish tolls, it would be conferring a great boon upon the poorer class in this country.

Mr. D. Graham objects to tolls on principle, because they obstruct traffic.

The Honourable Mr. GIBBS—I cannot help thinking we are now year by year drifting more and more into mere theoretical notions in regard to what ought to be done in this country. I do not know whether the Hon'ble member who has just spoken ever travelled in a country cart along an old-fashioned country track, because if he has, and has heard the oaths and other bad language used by the bullock-drivers, witnessed the many tail-twistings of the bullock, and finally seen the cart upset, had half his kit smashed, and been pitched out upon the road besides; if, moreover, at the end of his journey he had found one or both bullocks lame and the cart in a general state of disrepair—I think he would agree with what a native of Khandesh once told me comparing an old track we had just come along with a Local Fund road. Alluding to the latter this man remarked how good it was and how easily we went along. I asked him what he thought of the tolls; he replied that as the Sirkar had made the roads they must be kept up somehow; he did not object to the tolls, because he looked upon the roads as a saving of his bullocks and carts. "Jaissa ki mahal, waissa ki mohl"—as is the article so is its value—he reaped benefits from the roads, and he was prepared to pay for them. I think that considering what the state of the roads was when I came to India twenty-eight years ago and what it is now—the difficulty that then existed of getting from village to village, and the disadvantages which people used to labour under to get their goods brought cheaply to a good market instead of being compelled to dispose of them at a low rate in a place where there was little or no market—the change for the better has been wonderful. It has been admitted over and over again that the only way to do the country good is to open up communications by means of local roads, and if you do this you must keep up the roads in repair. I have never heard anybody—except gentlemen who deal in theories—I have never heard any person with practical experience who has been in the habit of meeting country drivers say they have heard them object to the system of toll-levying upon roads. I myself have had some practical experience, and I doubt much if the people do object to these tolls. I know that the amount they have to pay in tolls is nothing in comparison to what they had previously to pay for cart repairs and doctoring their injured bullocks. I have seen piece goods, dubbas of oil and ghee, and other goods upset over and over again in the old country roads, and now loads of goods can be taken in safety throughout the country. I should not have made these observations if I did not feel compelled to take a practical view of the matter, and apply my own experience to a matter which has become surrounded with theories.

Mr. Gibbs points out the advantage which the people in the Presidency now enjoy from good roads as compared with the state of the country a few years ago, and argues that in tolls the people are simply paying for benefits received by them.

His Excellency the COMMANDER-IN-CHIEF—I understand that all this Bill seeks to do is to legalise what has been going on in this Presidency for a long time.

His Excellency the PRESIDENT replied in the affirmative.

The Honourable MAHOMED ALI ROGAY—So far as the principle of this Bill is concerned I have nothing more to say than that I concur with the Honourable Rao Saheb, but I shall take the liberty of suggesting one or two amendments when we consider the Bill in Committee.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS said that public roads and bridges had been made out of local funds, imperial funds, and by other means, and roads had also been kept in good repair from these sources. In Guzerat there was a reserve in the

Rao Bahadur Becherdass Ambaidass opposes the Bill.

local funds of about a lakh of rupees, which sum ought to be applied to make new local roads; while as for imperial roads, commonly called Badshaee or King's Roads, they ought to be kept up out of Imperial funds, as when they were made by the Imperial Government it must have anticipated this charge upon its roads. To levy tolls in Guzerat upon people paying local cess already, municipal taxes would be unpopular and a burden. He thought it was unnecessary to introduce a Bill to remove the doubts about the legality of collecting tolls since 1864. As regards the proposed tax upon foot passengers he begged to point out that no such tax had hitherto been levied at the Ellis Bridge at Ahmedabad, which had unfortunately been lately washed away in the disastrous floods on the Saburmutee. He felt that he must oppose the Bill.

The Honourable Mr. ROGERS—The general drift of the Honourable Rao Bahadur's speech seems to be that those who pay local funds pay sufficient without paying tolls on roads. He refers to their paying municipal tolls as another reason why they should not be compelled to pay the tolls contemplated under this Act. He also appears to think that in ancient days, before the introduction of the British Government, there were roads upon which no tolls were levied. If the honourable gentleman will point out one single road, in any part of the country with which he is familiar, made by a former native government, I will agree with his argument; but I say there is not one such road in existence, and there never was one. Notwithstanding this, the native governments used to burden trade by transit duties, which the British Government has abolished. With regard to the Honourable Mr. Graham's suggestion that the local funds ought to be made to suffice for all purposes, I have only to say that we have most accurate reports from all parts of the country as to what is done with the local funds, and we find that in very few cases are these funds sufficient to carry out even the most necessary public improvements, particularly those regarding water-supply. Consequently, if tolls were not imposed, the only alternative would be to impose additional taxation all over the country, and I think the honourable gentleman will agree that it is better to make the people who use the roads pay small tolls than to introduce more taxation. One of those two things must be done—either keep the tolls or impose extra taxation. If we had no means but the Local Funds to support roads with we should soon see road-making abandoned, and the whole of the funds swallowed up in simple repairing. The case of England does not apply, because there the authorities have county rates and other means to enable them to do away with tolls and yet keep roads in repair. As I have said before, we have no such means available in India, and we must depend for our resources upon the local funds and tolls.

Mr. Rogers points out that tolls must be levied because the local cess is insufficient to keep roads in good repair, or else additional taxation will have to be levied.

The Honourable RAO BAHADUR acknowledged there was much truth in what the Honourable Mr. Rogers had said; but he still felt declined to pass the Bill. With regard to the remark that there were no transit duties, he thought there were, because a large income was derived from salt duty and land revenue.

The Honourable Khan Bahadur PADAMJI PESTONJI said one great objection to the present system was that the tolls were placed too near each other. He alluded to a Government resolution that tolls should not be set nearer each other than twenty miles. This resolution was alluded to in Mr. Nairne's book published in 1872, at page 298.

Khan Bahadur thinks tolls are now placed at too short intervals.

The Honourable Major-General KENNEDY said there was no Government resolution to that effect, although he thought there was one saying that tolls should be about a day's journey from each other.

The Honourable KHAN BAHADUR—A day's journey is calculated in the Government resolution to be about twenty miles.

The Honourable Major-General KENNEDY—That may be; but there was no special distance mentioned; and as a matter of fact tolls are now placed about a day's journey apart, sometimes they are twelve miles and sometimes twenty apart.

His Excellency the PRESIDENT—There are several objections to fixing twenty miles as a particular limit. I understand that no member of this Council would object to the establishment of a toll where a ferry formerly existed. Consequently I can see nothing unreasonable in charging toll upon a bridge which has been substituted for a ferry. In the same way I look upon the substitution of a really good road for a bad one, say over a severe Ghaut, as being quite as important for the convenience of traffic as the substitution of a bridge for a ferry, and this good road nobody should object to pay for. Of course a bad part of a road may not necessarily be twenty miles apart from another bad part, and this at once shows how objectionable it would be to lay down a fixed distance of twenty miles for tolls. In regard to the question raised about local funds, I may say that these are kept totally apart from the maintenance of the main roads of the country for this reason—it has always been the avowed object of Government to restrict the application of local funds to strictly local wants, and therefore you cannot look upon the local funds as available for the maintenance of main roads from district to district. In discussing this Bill therefore it will be well to keep quite distinctly before us the tolls as affecting the main roads of the country and as affecting local roads. These two have no connection whatever. It is quite true perhaps that as a matter of policy it would be desirable to abolish tolls. But then comes the question, how are the roads to be supported? No one surely is going to advocate that the roads should be allowed to go into decay, and if you abolish the tolls you will have to find some other means of supporting the roads.

The President shows the difficulties that prevent tolls from being fixed at regular long intervals.

The Honourable Khan Bahadur PADAMJI PESTONJI remarked that it was a pity to employ local funds upon imperial roads.

The Honourable Mr. GIBBS said he did not think that that was done.

His Excellency the PRESIDENT—I think, at all events, that the Government should do everything in its power to prevent the roads falling back again into their old state, and looking to the constant demand for new roads, I certainly should not advise the abandonment of tolls on a mere matter of principle.

The Honourable Colonel ANDERSON—Those who object to tolls do not sufficiently consider the great changes which have occurred in the communications of the country during the last 30 or 35 years. Previous to that time south of Poona there were but two made roads: first, the Bhore Ghaut from Poona to Panwel, a distance of 71 miles, at that time considered a marvel of engineering science, though hardly passable for a laden cart with its ordinary pair of cattle, and the other on the Ram Ghaut, from Belgaum to Vingorla, a distance of about 75 miles.

Colonel Anderson points out the improvements that have taken place upon roads of late years, and the difference they have made upon the trade of agriculturists.

This Ghaut was for the greater part at a slope of one in five or six, and was the cause of the death of hundreds of draught cattle annually. Now the country is intersected by roads in every direction and the superabundant produce of one part is able to supply the deficiencies of another to the great benefit of both the buyer and seller. In examining some old price lists, only a few days back, I found that in 1844-5, a famine year in every part of the Deccan, jowaree was quoted on the average of the year at 15 Indian seers in the Mareh Taluka, then in Poona, now in Sholapur; while in bazaars, not more than 50 miles distant, the average price of the year was nearly a third of that amount. Difficulties of communication alone prevented the transfer of produce necessary to produce some equalization of prices. Anomalies like this are now, through improved communications, become impossible. Brinjaree bullocks were formerly the main carrying agency of the country; now carts have supplanted them. Where there were 100 carts formerly, 500 and 600 will now be found, as shown by the comparative statistics of the present time and 30 years ago; where no carts at all existed in former times they are now numerous. Tolls are doubtless disagreeable as all taxes are, but in this case there is hardly any option; doubtless the people would prefer that the Government should provide funds from the general revenue to make and keep in repair all roads, but this is impossible. Tolls must either exist or roads be left to fall into disrepair, which the warmest opponents of the toll system would hardly select as the alternative. Doubtless the frequency with which tolls occur is a source of some irritation; they often occur in open places, near no visible obstacle, and the payer does not see how many bridges over rivers or bad nullas he has passed in the last few miles without payment; he only sees that he is called on to pay at a spot where no natural obstacle has been overcome, payment at which would appear to him quite reasonable. In this respect the present system appears open to remedy, and if tolls were even doubled on large bridges, ghauts, and other great natural obstacles, and their total number reduced, the people would be more satisfied and the toll revenue be far from suffering. No man takes the farm of any toll without looking for a large profit from it; the more numerous tolls are the larger becomes the wastage in remuneration of contractors. No toll is bought for Rs. 1,000 a year without the purchaser looking to clear another 1,000 by the bargain. The more the number of tolls is reduced, and the rate on each is increased, the smaller becomes the amount collected on the traffic of the country which would be diverted from the gross toll revenue into the pockets of the contractor, as the establishment required for the collection of a 4 annas cart rate would equally suffice for an 8 anna rate, which would admit of every other 4 anna toll rate being abolished. In this direction might be found an alleviation of some of the points in which the present toll system presses most heavily. Those who object to tolls should point out some practicable alternative; this has never been done, and theoretically bad as tolls may be, until a workable remedy can be found, they must be retained or present progress lost and further progress rendered impossible.

His Excellency the PRESIDENT asked if any of the honourable members objected to the second reading of the Bill.

The Honourable RAO SAHEB said he was afraid that some of his previous observations had been misunderstood. Although he objected on principle to *ex post facto* laws, yet he did not object to the second reading of the Bill, because practically the Bill had been in existence for twelve years past, and the only effect of rejecting it would be to undo what had *bonâ fide* been done by the officers of Government during that time.

The Honourable MAHOMED ALI ROGAY said he did not object to the second reading.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS said he objected to the second reading.

A note was taken of the single objection to the second reading of the Bill, and His Excellency the President declared that the Hon'ble Major-General Kennedy's motion was agreed to by a majority.

Bill read a second time and considered in detail.

The Council then proceeded to consider the Bill in detail.

Mr. Nacoda Mahomed Ali Rogay proposes that section 2 should be omitted, and thinks Government should pay the penalty of not legalising the collection of tolls since 1864.

The Honourable MAHOMED ALI ROGAY proposed that section 2 of the Bill should be omitted. He could not see the good of introducing the present Bill if the Council had power to extend Act XV. of 1864 to the Presidency.

The Honourable Mr. GIBBS—We have in the present Bill reduced very considerably the schedule contained in the Act of 1864.

The Honourable Major-General KENNEDY—If my honourable friend were to succeed in repealing this section we should simply have to fall back upon the Acts of the Government of India with their higher schedules.

His Excellency the PRESIDENT—The practical effect of the omission of this section would be to hold out to all who have hitherto been paying these tolls an inducement to bring actions against the toll-collectors, who were acting *bonâ fide* under the authority of Government; and unquestionably if the toll-collectors were cast in these actions, the Government would have to refund all the tolls.

The Honourable MAHOMED ALI ROGAY—I do not see why parties who have been injured should not reap the advantage of the mistake which has been made by Government.

His Excellency the PRESIDENT—Do you mean that you want to see a quantity of law-suits filed against the Government?

The Honourable MAHOMED ALI ROGAY—Yes; if Government illegally imposes tolls I think it ought to pay for the consequences.

His Excellency the PRESIDENT—You must not forget that it is the public money that will have to pay, for Government merely represents the public.

The Honourable Mr. GIBBS—To be reasonable, I suppose that the honourable member would insist that the Government of the day, when these tolls were levied, should be called to bear the responsibility; and as Sir Bartle Frere will shortly be in Bombay, perhaps it would be possible to get him to adjust the claims of the persons who have been paying the tolls illegally.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK said he would not vote on the section at all. He was opposed to retrospective laws on principle: such laws were opposed to the very constitution of some states. And although such may not be the statutary law of India, all such acts which sought to abridge contracts or impose *post facto* burdens on the people ought to be avoided. He could not therefore vote for the clause. But he would not vote against it; because all the officers who were acting under the vetoed Act, and the previous Acts of the Council of India, have been acting *bonâ fide* and require to be protected under the particular circumstances of this Bill.

Section 2 passed after a division.

A vote was taken on the Honourable MAHOMED ALI ROGAY'S motion with the following result :—

Ayes.	*Noes.*
The Honourable Nacoda MAHOMED ALI ROGAY.	His Excellency the Honourable SIR CHARLES STAVELEY, K.C.B.
The Honourable Rao Bahadur BECHERDASS AMBAIDASS.	The Honourable A. ROGERS.
	The Honourable J. GIBBS.
	The Honourable Major-General M. K. KENNEDY.
	The Honourable Colonel W. C. ANDERSON.
	The Honourable Khan Bahadur PADAMJI PESTONJI.
	The Honourable DONALD GRAHAM.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK did not vote.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I wish to propose an amendment upon section III. with reference to the tolls levied upon roads made entirely from local funds. In legislative matters I think we must, to a certain extent, go upon theory, for that is simply a rule derived from practical experience. When I see what the experience of the Bombay Government has been in this matter, I am somewhat strengthened in the course which I wish to suggest upon the present occasion. In the last general report for the Bombay Presidency there is a passage in a minute recorded by His Excellency the President to which I wish to refer. His Excellency says :—" The following general conclusions may be drawn from the replies received from the Revenue Commissioners, Collectors, Assistants, &c., to the circular letter No. 3821, dated the 20th August :—Tolls are unpopular, more particularly with those who pay the one-anna cess and therefore consider themselves entitled to the use of the roads without further charge."

Rao Saheb Vishvanath Narayan Mandlik proposes an amendment upon section 3, in order to prevent people who have already contributed to Local Funds from being compelled to pay Tolls on local roads.

His Excellency the PRESIDENT—That merely recites the fact that tolls were unpopular.

The Honourable RAO SAHEB—That is all I wish to point out. What we have to examine here is whether the unpopularity in this case arises from a disposition somewhat common to humanity to avoid one's own burdens and place them on the shoulders of other people, or whether it is a just unpopularity founded upon the course which has been pursued by the Government. Now, I submit that those who pay the one-anna cess upon roads have a certain right to expect improvements upon these roads for the accommodation of their traffic without being subjected to additional taxation. Perhaps the case is different in regard to imperial roads made from the general revenues of the empire over navigable rivers or over ghauts or over very bad tracts of country which but for these roads would be dangerous to carts and animals; but when we talk of the necessary improvements within the local area of districts, the means of those who pay local funds ought to be taken into consideration before tolls are imposed. These means are determined by the proceeds of the road and school tax, and it is not the absolute means of com-

munication but the relative means of communication which should be considered by the local funds department. However correct it may appear to be, that if a man uses a road he ought to pay something for that convenience, yet when a man does already pay taxes for the purpose of making the roads, it is not reasonable to tax him over again for the same convenience—namely, by compelling him to pay another tax for using the self-same roads.. I hope that the country will be still further developed by roads, but at the same time I think there is a danger in spreading taxes over too many sources, and I think it would be more conducive to the general interests of the country if we had fewer of these tolls. My position is this—that if it can be shown that a man is using a road wholly or partially constructed from imperial revenues he might be made to pay tolls, but in the case of absolute local funds roads, the one-anna cess, which he has already paid, ought to suffice. I, therefore, beg to propose that the words " wholly or partially " be inserted between the words " repaired " and " at " in line 7, and that the words in lines 8 and 9 " or from funds collected under the provisions of Bombay Act III. of 1869," be omitted.

The Honourable Colonel ANDERSON—It is too much to expect that the local funds are a mine of wealth which can supply everything. One-third of the local funds goes to schools, and dharamsallas which people occupy free are also constructed out of them. Again, in places where there is a scarcity of drinking water the improvement of the supply is thrown upon the local funds, and this is a point of the greatest importance, for it is doubtless to this beneficial improvement of the general water-supply that the great diminution of cholera, which has taken place all over the country during the last ten or fifteen years, is due. Again, roadside trees, a great source of comfort to travellers, are planted at the expense of the local funds. When all these things are done out of the local funds I do not suppose that there is more than five pies out of the one-anna available for the improvement of roads. Now, as five pies cannot do the work of one-anna I think it is impossible to dispense with tolls.

Colonel Anderson contends that the Local Funds must be supplemented by tolls, because the portion of them actually applied to roads is insufficient to make and maintain roads.

His Excellency the PRESIDENT—Can it be considered that the portion of the one-anna cess which is expended on the roads bears any proportion to the benefits which are derived from the fact that excellent communications with good markets are now available to the agriculturists of the Presidency ? Admitting that these people do pay the one-anna cess, I think before we speak of the abolition of tolls we ought to make sure whether the cess bears any proportion to the benefits which they derive from possessing good roads unknown to their ancestors, who had to be contented with a limited local market for their produce.

The Honourable Major-General KENNEDY—I think my honourable friend the Rao Saheb draws a distinction between provincial and local roads, which is not justifiable. Provincial roads are made out of revenue derived from provincial sources, and the local roads are made out of the local funds levied under local Acts. The general public pay, in the way of tolls, for the maintenance of the provincial roads, and the general public have also to pay for the maintenance of local roads. No doubt a part of the general public contributes to the one-anna cess, but I do not think my honourable friend would contend that because a man builds a house therefore he need not keep it in repair. If the people who contribute to local

funds were to build a Town Hall or a dharamsalla it would have to be repaired and maintained at the expense of the local funds; and the argument is the same when it relates to the question of the obligation of the people to maintain the roads which they have constructed.

The Honourable Colonel ANDERSON—There is another point to notice. Who actually pays these tolls? The cultivator undoubtedly pays them in the first instance, but it seems to me that the person who has actually to pay them in the long run is the consumer of the cultivator's produce.

The Honourable Mr. ROGERS—I think that the Honourable Rao Saheb's argument might hold good if the only people who use the local funds roads were the people who pay the cess; but, as a matter of fact, the general public also use the roads, and why they should get the use of the roads as a present, I cannot understand.

The Honourable Mr. GIBBS—Again it would not be fair to throw the maintenance of the roads on the shoulders of a whole district, because many people who do not keep carts would be compelled to pay for the convenience of those who actually cut up the roads with their vehicles. When you go into the subject deeper it becomes more and more difficult. I quite agree with what my honourable friend Mr. Rogers has said.

The Honourable RAO SAHEB—I regret that I shall have to repeat one or two things that I have already said. The question really is, what are necessary local improvements? It may be that to cover a whole district with a network of roads might be a very necessary improvement; but the word necessary is ambiguous. I do not say that many roads are not necessary in this sense, that positively speaking they would be improvements; but we must consider all improvements relatively, *i.e.*, having regard to the means of the people who are to be taxed for making them. And I say, further, that the means to effect such improvements should be the local funds. I am entirely distinguishing between provincial roads and imperial roads, and I do say that the case of a man who pays a tax for making a road is very different from that of a man who is using a road made simply from that fund. The objection made by the Honourable Mr. Rogers will not practically arise, because all I propose is that the general public should get the advantages for which a portion of the public has already paid by means of contributions to the local rates. If, as is hoped, revenue improves under the new survey administration, there may be a large increase in the local funds; but until there is such improvement, we ought not to carry out schemes beyond the means of people in a district. We ought to look to the capacity of the people more than we do, and in the meantime I hope that the argument that the general public will derive benefits from the roads will not be permitted to weigh against the injustice of taxing a man twice for the same thing. The Honourable Colonel Anderson asked, who pays the rates? Although this is a great economical question, I think it would not be quite satisfactory to discuss it in a Bill for the levying of tolls. It may be quite true that many of the agriculturist's charges would fall upon the consumer; but at the same time many of these mofussil tolls will fall directly upon those who use them. The poorer districts do not export in large quantities, and yet the people have to pay three or four tolls. There ought certainly to be roads, but still we must keep within the means of the people.

A vote was taken upon the Honourable RAO SAHEB's amendment, with the following result:—

Ayes—2.	*Noes*—7.
The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK.	His Excellency the Honourable SIR CHARLES STAVELEY, K.C.B.
The Honourable Nacoda MAHOMED ALI ROGAY.	The Honourable A. ROGERS.
	The Honourable J. GIBBS.
	The Honourable Major-General M. R. KENNEDY.
	The Honourable Colonel W. C. ANDERSON.
	The Honourable Khan Bahadur PADAMJI PESTONJI.
	The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

The Honourable DONALD GRAHAM did not vote.

The Section was agreed to.

Referring to section IV. His Excellency the President thought the first part of this section might prove exceedingly vexatious, and he thought it might be amended so as to make a toll-keeper entitled to seize only as much of a person's property as would suffice to pay the toll.

The Honourable Major-General KENNEDY—This section is quite in accordance with former Acts.

The Honourable Colonel ANDERSON—I think the section as it stands invests a most dangerous power in the hands of toll-keepers.

His Excellency the COMMANDER-IN-CHIEF remarked that the custom in England was simply to let a toll-keeper bar the way of a person who could not pay toll.

His Excellency the PRESIDENT—The people in this country have to travel such immense distances, that it would scarcely do to bar their passages. I think the section might be made to read as follows:—"In case of non-payment of any such toll on demand, the officers appointed to collect the same may in the first place seize any part of the burden or load of the carriage or animal on which the toll is chargeable of sufficient value to defray the toll, or in the event of the burden or load being insufficient, such carriage or animal," &c.

The amendment was agreed to.

The President remarks that in the Bill there is no penalty laid down for evasions.

His Excellency the PRESIDENT remarked that he could see no provision in the Bill dealing with evasion, although this was a very common offence in all countries.

The Honourable Major-General KENNEDY thought His Excellency's objection was a good one, for a man might travel fourteen miles and then turn off and evade the toll placed on the road at the fifteenth mile.

The Honourable RAO SAHEB thought it would be exceedingly difficult to make evasion laws.

The Honourable Colonel ANDERSON concurred with the Honourable Rao Saheb.

The Honourable Mr. GIBBS mentioned that the latter part of section V. was not in the Bill introduced last year, and that it had been put in subsequently at the suggestion of the Government of India.

The Honourable Khan Bahadur PADAMJI PESTONJI said that although he would not oppose the section, still he thought that Government stores should not be exempted from payment on Local Funds roads.

The section was agreed to.

Section VIII. was amended as follows:—the words "shall be put up in a conspicuous place near such gate or station" were struck out, and at the end of the section these words were added after "toll"—"shall be furnished by Government to the collector of tolls, and the same shall by him be kept in a conspicuous place near such gate or station."

Alluding to section IX., His Excellency the PRESIDENT asked, what would happen if the toll-collector with whom a composition had been made should be turned out before the expiry of the year? Would the man who had compounded be made to pay over again?

The Honourable Mr. GIBBS—No; if necessary the amount would be recovered from the sureties of the toll-collectors.

No alteration was made in the section.

The Council then proceeded to the consideration of the schedule.

The Honourable Khan Bahadur PADAMJI PESTONJI thought that a palkee with eight or six bearers should not be charged more than eight annas, as not more than four bearers carry the palkee at a time. The extra bearers may be charged as foot passengers.

The Honourable Colonel ANDERSON thought that certainly the charge of 2 annas upon every palankeen, dooley, palna or tonjon with two bearers should not be continued in the schedule. Many poor people carried their sick relative in palnas, and in such a case as two sons carrying their mother between them he thought that a toll would be a hardship.

On the consideration of the schedule, Colonel Anderson proposes that conveyances carried by two persons should be exempted from tolls.

His Excellency the PRESIDENT concurred.

The Honourable Major-General KENNEDY did not approve of exempting any person carrying a palkee or palna from the schedule.

The Honourable RAO SAHEB sympathised with the Honourable Colonel Anderson's views. Poor people were generally moved about by being slung in a piece of cloth between two of their friends or relatives, or were taken in a small *pálna* carried by two bearers.

The Honourable Colonel ANDERSON said he was disposed to put the matter to the vote. He begged to propose that the last line but one of the schedule should be omitted.

The following was the result of the vote :—

Ayes—8.

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.
The Honourable J. GIBBS.
The Honourable Colonel W. C. ANDERSON.
The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK.
The Honourable Nacoda MAHOMED ALI ROGAY.
The Honourable Khan Bahadur PADAMJI PESTONJI.
The Honourable DONALD GRAHAM.
The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

Noes—2.

The Honourable A. ROGERS.
The Honourable Major-General M. H. KENNEDY.

The Honourable Major-General KENNEDY said—To be consistent I shall propose that a line be inserted in the schedule by which every palankeen, dooly, palna, or tonjon with two bearers shall be charged one anna.

After some conversation the subject dropped.

The Honourable RAO SAHEB—Regarding the item authorising the taxation on foot passengers I think the difficulties which have been discussed as bearing upon the subject in this Council might be met by saying that foot passengers should be liable to tolls only on bridges over navigable rivers or upon hill roads, and that in all such cases the special sanction of Government would be required.

Rao Saheb Vishvanath Mandlik proposes that foot passengers should be liable to pay toll only on bridges or heavy ghaut roads, and even then that the tolls should be collected from them only with the approval of Government.

The Honourable Major-General KENNEDY—Throughout the length and breadth of the Presidency at the present moment tolls are charged upon foot passengers only at the Matheran Ghaut.

The Honourable Mr. GIBBS—During all these years we have not, with the exception just pointed out, levied tolls upon foot passengers, and I cannot vote for any such amendment as the Honourable Rao Saheb suggests, because it appears to me that by so doing I should be supporting a vote of want of confidence in the Government, who surely may be trusted for the future as they have been for the past, and I see no cause for having one law for this Presidency and another for all the rest of India.

The Honourable Major-General KENNEDY said he did not object to an amendment upon the subject if it were limited to bridges and hill-roads.

The Honourable RAO SAHEB then moved that the last line of the schedule stand thus—"On every foot passenger, with the special sanction of Government, on bridges or hill-roads, 3 pies."

The following was the result of the vote:—

Ayes—8.	*Noes*—1.
His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.	The Honourable J. GIBBS.
The Honourable A. ROGERS.	
The Honourable Major-General M. K. KENNEDY.	
The Honourable Colonel W.C. ANDERSON.	
The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK.	
The Honourable Nacoda MAHOMED ALI ROGAY.	
The Honourable Khan Bahadur PADAMJI PESTONJI.	
The Honourable Rao Bahadur BECHERDASS AMBAIDASS.	

Rao Saheb's motion agreed to and the Schedule passed as amended.

On the suggestion of His Excellency the President the following words were added to the Schedule:—"No second toll shall be levied on the same carriage or animal returning on the same day."

Bill read a third time and passed.

The preamble and title of the Bill were agreed to, and the Bill was then read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Governor in Council.

W. LEE WARNER,
Acting Under Secretary to Government.

Poona,
30th September 1875.

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